



MINUTES

**FORT MYERS BEACH TOWN COUNCIL
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931**

February 7, 2011

9:00 AM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 9:11 a.m. Present with Mayor Kiker, Vice Mayor Raymond, Council members Babcock, List and Mandel, Town Manager Stewart, Town Attorney Miller and Town Clerk Mayher.

II. INVOCATION – Vince Cummings

III. PLEDGE OF ALLEGIANCE

All stood for Pledge of Allegiance

IV. APPROVAL OF FINAL AGENDA

- Attorney Humphrey to speak after Consent Agenda due to another engagement
- Public Hearings still to be opened although applicant requested the case be returned to LPA

Agenda approved

V. PUBLIC COMMENT

Public Comment Opened

▪ **Roy Hinkleman, Pres. Laguna Shore** representing the 120 property owners indicated numerous property owners had been sending him nasty notices stating they did not feel the matter of the filled in passes were being dealt with fast enough to suit them. He will be corresponding with Town Manager Stewart via email as he would be out of town for approximately a month.

▪ **Gary Ferris, owner of Gulfshore Grill** addressed Council concerning beverages on the beach, however, they were continually being visited by ABT and the Sheriff's Dept. Mr. Ferris felt it was not right that the business

next door could allow it and they could not, that there was not an equal opportunity for the businesses, asking the Council for assistance with the problem.

▪ **Sam Lurie** thanked Council for forwarding Cindy Hoover's petition to the library board even though they refused to accept it; thanked Council for offering the use of Council chambers for the library board meetings, and read his findings and thoughts on the library expansion project.

Public Comment Closed

Town Manager Stewart responded to Mr. Hinkleman indicating things were moving forward with the DEP, with permits coming within a couple of months as well as possible funding from the WCIND for the cost of reopening the channels.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember List noted that Town Manager Stewart won Professional of the Year at the Chamber Gala, as well as her attendance at the Tea by the Sea, and an Eagle Scout induction ceremony.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

NONE

Mayor Kiker indicated Council had held two joint meetings, one with the MRTF and one with CRAB and a future work session scheduled with BORCAB.

VIII. APPROVAL OF MINUTES

- A. January 3, 2011 Regular Town Council Meeting
- B. January 3, 2011 Work Session

MOTION: Councilmember List moved to approve with a second by Councilmember Babcock.

VOTE: Motion passed 5 to 0

IX. CONSENT AGENDA

- A. North Estero Night Paving

Town Manager Stewart indicated this was the final paving of North Estero, that it was best to complete the job at night to alleviate traffic and to keep heavy traffic off the new pavement until it has a chance to set.

MOTION: Councilmember List moved to approve; second by Councilmember Mandel.

VOTE: Motion passed 5 to 0

▪ **Town Attorney Jim Humphrey** addressed Council regarding the library. Mr. Humphrey began by stating the Department of Community Affairs Handbook

contained all statutory requirements, including the Chapter 189 Accountability Act. Mr. Humphrey noted that the financial reporting was a way to keep the public aware and to improve communications not to promote adversarial issues.

The information was to enhance citizen participation; a special district was subject to the Sunshine Law and that any lack of compliance would be the State's jurisdiction. A list of items required in the facilities report under Chapter 189 was reviewed by Mr. Humphrey.

Mr. Humphrey reviewed the minutes from the LPA meeting of May 2, 2008, noting the lack of information presented during that meeting in accordance with the facilities report. Attorney Humphrey corresponded with the library's attorney, Attorney Anne Dalton, attempting to set up a meeting with her to address the issues regarding the library expansion.

Councilmember Babcock felt all needed to comply with Chapter 189, not wanting to make it an adversarial issue, and asked whether the town had requested a report. Mr. Humphrey replied that he had sent a written request. Councilmember Babcock was concerned with the process looking like a vendetta, and the fact that the process was going to cost the taxpayers on both sides, through the town and the library, and asked whether there was ever a request made to the fire district regarding the new fire station that had been built.

Councilmember Babcock stated he did not want Council to overstep the intent of their job, noting that what they were asked to do was deal with a land use issue, making sure it complied with the town's LDC and Comp. Plan. Mr. Humphrey noted that at the time that's what the Council and LPA did with the information provided from the library, however, the information provided did not contain the necessary information pertaining to Chapter 189 as a facilities report.

Councilmember Mandel indicated he felt there was turmoil on the island regarding misinformation and thanked Attorney Humphrey for his review of pertinent information, provided his view of the issue, including the financial responsibility pertaining to all the special districts; fire, mosquito and library.

Vice Mayor Raymond felt the library board should be making the decisions as to what they do or don't build, noting it was not Council's decision; however said it was their responsibility to look after the residents' best interest by staying more informed regarding all the special districts and following the law.

Councilmember List asked if Council was required to request reports or were the special districts required to provide the reports; Mr. Humphrey indicating it was the districts responsibility to provide the reports.

With consensus of Council, Mayor Kiker asked Mr. Humphrey to follow up with a letter stating Council's position and allowing the library board to respond.

X. PUBLIC HEARINGS

A. FMBSEZ2010-005, Surf Club Special Exception

At 10:20 a.m. Mayor Kiker opened the hearing asking Council for any ex parte` with Councilmember Babcock, Vice Mayor Raymond and Councilmember List answering no. Councilmember Mandel had been there to hear the owner describe his future plan. Mayor Kiker made a personal visit to the Surf Club, sitting with the owner and going over the plans.

Town Manager Stewart indicated the applicant's representative was withdrawing the application in order to have the LPA give further consideration.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember Mandel moved to close the hearing; second by Councilmember List.

VOTE: Motion passed 5 to 0

Hearing closed at 10:26 a.m.

B. FMBSEZ2010-003 Mermaid Liquor & Lounge Special Exception

Mayor Kiker opened the hearing at 10:26 a.m. asking for ex-parte; Council members had none, except for Mayor Kiker who spoke with the owner.

Town Manager Stewart informed the council that the applicant requested a withdrawal in order to have the LPA give further consideration.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Motion by Councilmember Mandel to close the hearing; second by Councilmember List.

VOTE: Motion passed 5 to 0

Hearing Closed at 10:28 a.m.

Mayor Kiker offered clarification on the two hearings, both businesses had asked for decks with COP on both decks; however, there was then a question if the COP pertained to only the decks or the entire premises surrounding the decks, so both issues were going back to the LPA for consideration.

C. Introduction and Public Hearing 2011-01,
Ordinance Amending Sign Ordinance

Town Clerk Michelle Mayher read the ordinance title:

ORDINANCE NO. 11-01

AN ORDINANCE AMENDING CHAPTER 30-SIGNS IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AMENDING DEFINITIONS; APPLICABILITY; PROHIBITED SIGNS; EXEMPT SIGNS; POWERS AND DUTIES OF TOWN MANAGER, PERMITS AND INSPECTIONS; NON-CONFORMING SIGNS; DESIGNATION OF HISTORICALLY SIGNIFICANT SIGNS, COMPUTATION OF SIGN AREA; LOCATION; TEMPORARY SIGNS; MAXIMUM SIGN AREA; AND STANDARDS FOR CERTAIN TYPES OF SIGNS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Marilyn Miller indicated her firm had been asked to look at the ordinance since there were aspects of the ordinance with questionable constitutionality. Ms. Miller stated signs are considered speech so they are protected by the first amendment with several ways the first amendment could be challenged.

Attorney Miller continued by addressing 3 aspects of the ordinance.

- Content Neutral – cannot regulate based on content
- Prior Restraint – cannot put prior restraint on speech when there were no specific time frames for approving sign permits
- Ordinance could be challenged due to vagueness, so it was made more definitive

Substantive changes from the previous document were:

- Historical – LPA had been final authority, now ordinance indicates the LPA would send their recommendation to Council with Council having final decision
- Non-conforming signs – provides definite time, any non-conforming sign must be removed by December 31, 2011.

Attorney Miller provided a list identifying which changes were made for constitutional reasons and which were made for clarification.

- **Rochelle Kay, LPA member**, reviewed the history of the sign ordinance and addressed the process for the Historic Preservation Board, feeling changes regarding the HPB would bypass their duties.

Public Comment Opened

No Public Comment

Public Comment Closed

Councilmember List addressed 30-57 asking Attorney Miller for a clarification.

Councilmember Mandel asked Attorney Miller if there was an action that could be taken if an applicant did not like a decision from the Council or LPA. Attorney Miller responded they would have the option of taking it to court.

Councilmember Babcock questioned the terminology of Sandwich-board signs. Attorney Miller replied that other than for the parasail/jet ski businesses they were prohibited. Councilmember Babcock then addressed temporary signs, especially for rent signs and time frames of same, then continued with comments regarding Sec. 30-57 Designation of Historically Significant Signs, suggesting a wording

change for an appeal, to make for an easier process.

Discussion continued regarding the process and the fact that Council should be making all final decisions.

Vice Mayor Raymond discussed rental signs indicating some properties are rented all year long, some on a weekly, monthly or annual basis making it difficult to restrict those types of signs, along with for sale signs, noting that some houses take over a year or more to sell.

Mayor Kiker did not feel it changed the duties of the HPB but did put the final decision back on the Council.

Councilmember Babcock stated that the staff reviewed issues such as building codes which did not necessarily come back to Council, noting a similar process could be utilized for historic signs, deleting section D. of 30-57.

Council made a decision to leave the section as is.

Councilmember Babcock then asked if there needed to be a change to the LDC, Section 22-203 as he felt it could be in conflict with 30-57. Attorney Miller agreed that a change should be made. Councilmember Babcock continued by questioning page 29, Election Signs and the sizes allowed, changing 16 square feet to 4 square feet even in commercial areas, with all of Council in agreement.

Councilmember Babcock then addressed the number of election signs permitted, voicing his disapproval of 1 sign per 10 feet of property. Consensus of Council was to leave the wording as stated.

Mayor Kiker indicated he would like to have the time limit to less than 30 days for the election signs and on page 13 of the ordinance asked if the deletion of bench signs meant the town would no longer be allowing bench signs and if so who was going to tell Lee Tran the signs would need to come off of their benches right away as well as the benches on the beach. Mayor Kiker then asked about the time line for removal of signs when a company goes out of business and what the process would be if the sign was not removed.

Mayor Kiker then asked about new businesses putting up non-conforming signs yet still being given a business permit, businesses that had closed yet their signs remain, and the fact that banner signs are now appearing everywhere on the island and the fact that developers were able to erect large signs, which seem to remain for years with no development on the site.

Attorney Miller stated that banner signs were only permitted for special events with a cash deposit required. Town Manager Stewart asked Town Attorney Miller if the town could deny a certificate of use if the business had already displayed a non-conforming sign, with Attorney Miller indicating it would need to be written into the ordinance. There was a consensus from Council

to do so.

MOTION: Councilmember Babcock moved to forward Ordinance 11-01 to a final hearing on February 22, 2011 at 6:30 p.m.; second by Councilmember Mandel.

VOTE: Motion passed 5 to 0

Hearing closed at 11:26 a.m.

Recess: 11:26 a.m. Reconvene: 11:45 a.m.

XI. ADMINISTRATIVE AGENDA

A. 1st Quarter Budget Presentation

Finance Director Evelyn Wicks addressed Council indicating the town had collected 74% of the property taxes, the general fund numbers looked good, the building department was sitting at 33%, stating that had to do with building permits and how the town interacted with the county, indicating she had asked the Building Official Ken Miller to speak to Council regarding how the process worked.

Ken Miller, Building Safety Services Coordinator addressed Council providing an overview of a document presented to Council and reviewed the percentages of permits issued, and fees and payments to the county for their services. Discussion continued indicating that alternative methods were being looked at in dealing with the county.

Discussion continued regarding government lite and the need for public relations, as well as the town not having pension costs. Town Manager Stewart indicated that all the items would be brought back to the Council for further discussion.

B. Approval of Subgrant Agreement for Basin Based Storm Water

Cathie Lewis, Public Works Director indicated it was an application that staff submitted several years ago, having now completed the application portion of the grant and had recently been awarded the ability to move toward construction which applied to the area from Carolina Street to Tropical Shores Way. Ms. Lewis indicated it was a rather small project, but adding some small additions such as sidewalks on the gulf side. Ms. Lewis stated 75% would be funded by FEMA with 25% match from the town which had been budgeted for the fiscal year.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember Mandel made a motion for approval of the grant As requested; second by Councilmember List.

Councilmember Babcock asked Ms. Lewis if the town would receive any funds for work along Estero, and if so would it reduce the town's portion. Ms. Lewis responded she was hopeful but it would not reduce the town's share, also stating the town's funds would come from gas tax and impact fees.

Enterprise funds were briefly discussed pertaining to the water utility and storm water management with an assessment program.

VOTE: Motion passed 5 to 0

C. FY2012 TDC Applications

Town Manager Stewart indicated the time was coming up quickly for the town's request for funding with staff recommending 2 funding applications to the TDC for (1) beach and shoreline operations and maintenance; (2) capital improvements within beach and shoreline guidelines for shade structures at the Newton Beach Park. Councilmember Mandel asked about adding a request for lead paint removal at the Mound House, funds for Bay Oaks for possibly the pool and/or waterslide as well as for fireworks displays over the 4th of July and New Years.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember Mandel made a motion to accept staff's request; second by Councilmember Babcock.

VOTE: Motion passed 5 to 0

XII. TOWN MANAGER'S ITEMS

A. Update on Park Improvements

Town Manager Stewart reviewed progress at the gulf front park, noting the upper seawall had been removed, debris and remaining materials from previous structures on the site as well as a 500 gallon tank were removed. Mr. Stewart stated there were no permits on the town's part that had not been issued to hold up progress; the county was moving forward with the project.

B. Update on Beach Renourishment

Town Manager Stewart indicated the project was to begin around April 15th due to a conflict in getting the sub-contractor in place for the groin. Mr. Stewart stated they had been working with the property owners along the shoreline to get them to sign off on the easements.

Mayor Kiker asked if work would be done during the night. Mr. Stewart stated the contractor would not be working through the night since they had smaller pipes, however the pump noise should not be heard, just the flowing of the water and if night work was required, the town would be notified.

C. Discussion Regarding Town Open House March 26, 2011

Mr. Stewart provided Council with an update with some of the things proposed. Mr. Fluegel asked if Council wanted to allow Town Hall to be open as well to obtain public input on the E.A.R. with maps and the Comp. Plan.

Town Manager Stewart indicated there was a request from the Civic Assoc. for use of the Chamber's for a candidate debate for February 23rd or 24th . There was a consensus from Council to ok the use.

Mr. Stewart stated there was a request from the Civic Assoc. for Town Council to audit the Island Arts Foundation on its use of Town donated funds. Mr. Stewart noted he had sent the request to the Town Attorney to see if the town had the authority to ask for the audit.

XIII. TOWN ATTORNEY'S ITEMS

None

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Babcock addressed the traffic cameras, stating he had received a suggestion that there be 2 cameras at the Newton Property location, one facing north and one facing south. Mr. Stewart indicated the town was already looking at adding an additional camera.

Vice Mayor Raymond asked for a time line for the use of the offices at the Newton property. Town Manager Stewart stated there would be a staff member that would be scheduling the use of those offices, and that they were currently awaiting installation of the phone lines. Vice Mayor Raymond felt there needed to be a period each week for one Councilmember to man one of the offices to allow for the public to meet and ask questions.

Vice Mayor Raymond stated he had a walk through at the Mound House, asking for a discussion of Mound House be placed on agenda management. Also Mr. Raymond touched on a meeting the Chamber was going to have about a direct trolley lane, indicating he was less than happy that he had not been notified of the meeting.

Councilmember List reminded all about an arts and crafts fair at Bay Oaks on February 19th.

Councilmember Mandel again asked when the pedestrian safety signs were going to be placed on Estero Boulevard. Cathie Lewis indicated the only way the County would allow the placement of the signs was if there was a study done, hopefully being able to install the signs by the first of March. Councilmember Mandel reviewed his findings on the BP oil spill requesting the TDC to make another request for additional funding, and if additional funds were received they would probably be used for advertising. The Horizon Council Meeting was then addressed with Councilmember Mandel noting a discussion of extending permits due to the economy.

Mayor Kiker asked Council if they wanted to cancel the March 7th meeting due to the election on the 8th .

XV. AGENDA MANAGEMENT

Councilmember List asked to bring the Eagle Scouts in for the next meeting.

XVI. RECAP OF ACTION ITEMS

- Contact Mr. Hinkleman regarding Laguna Shores update
- Night paving approved – information to be sent to contractor
- Work with applicants to reschedule public hearings
- Address changes regarding the sign ordinance with Town Attorney
- Schedule discussion of implementation of sign ordinance for a work session
- Park improvements updates
- Beach nourishment updates
- Bay Oaks E.A.R. open house
- Letter regarding trolley lane
- Pedestrian sign update
- Notify Civic Assoc. for approval of use of Council Chambers
- Work with attorney regarding Civic Assoc. requested audit for the IAF

Vice Mayor Raymond asked about the opening of the Mound House with Town Manager Stewart indicating they were on schedule and possibly slightly ahead of schedule.

XVII. PUBLIC COMMENT

Public Comment Opened

- **Lee Melsek, FMB Civic Assoc.** corrected the Civic Association's use of the Council chambers was not to hold a candidate's night but rather a regular meeting.

Public Comment Closed

It was asked if the Civic Association wanted the use of the Chambers on a regular basis, which it was indicated that it was. Town Manager Stewart cautioned Council in allowing the request, noting it had nothing to do with the Civic Association, but if you allowed one association you had to allow all. Mr. Melsek then stated it would be a one time request, with Council consenting to the request.

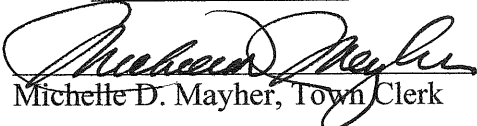
XVIII. ADJOURNMENT

MOTION: Councilmember List moved to adjourn with a second by Councilmember Mandel.

Meeting Adjourned at 1:05 p.m.

Adopted 3/21/11 With Without changes. Motion by List / Mandel

Vote: 5-0


Michelle D. Mayher, Town Clerk

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